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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2021
PRONOUNCED ON : 24.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.NO.368 OF 2014
AND
MP.NO.1 OF 2014

(Through Video Conferencing)

L.Kubendhiran ...Appellant / Plaintiff

Vs

The Managing Director,
M/s.Jothi Foundation & Construction (P) Ltd.,
No.C-64, First Main Road,Anna Nagar East,
Chennai 600 102. ...Respondent / Defendant

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated 12.07.2013 made in OS.No.8732 of 2010 by the XVIII Additional District and Sessions Judge, Chennai.

For Appellant : Mr.V.K.Rajagopalan

For Respondent : Mr.Ashok Menon

JUDGEMENT

- 1.This Appeal Suit has been filed, against the judgement and decree, dated 12.07.2013, made by the XVIII Additional District and Sessions Judge, Chennai, in OS.No.8732 of 2010, filed for specific performance of the sale agreement, dated 09.10.2007 and for permanent injunction.
- 2.The case of the Plaintiff is that the Plaintiff had entered into a sale agreement, dated 09.10.2007 with the Defendant Firm, for purchase of a Flat in the First floor in Plot No.1, New Colony, Second Street and Plot No.B in VOC Nagar, Aynavaram, for an extent 880 sq.ft., including the undivided share of the land for a total sale consideration of Rs.19,50,000/- and an advance sale consideration of Rs.4,80,000/- was paid. The sale was to be completed on or before 04.08.2008. The Managing Director of the Defendant Firm,



Jothi Swaminathan, who signed the sale agreement, was dragging on the matter, without completing the sale and after his demise on 06.07.2008, his son became the Managing Director. Even though the Plaintiff was always ready and willing to perform his part of the contract, the Defendant Firm did not come forward to execute the sale deed. Hence, the suit had been filed.

3. The case of the Defendant is that no agreement of sale was executed between the Plaintiff and the Defendant and that taking advantage of the death of Jothi Swaminathan, the Plaintiff is trying to get a decree in this suit. During the life time of Jothi Swaminathan, the Plaintiff had filed OS.No.5923 of 2008 for permanent injunction, restraining the Defendant from alienating Flats B5, B6 and B11, in the premises bearing Plot No.1, Door No.22, Jothi Housing, New colony, 1st street, V.O.C. Nagar, Anna Nagar East and in the said suit, there is no whisper about the alleged sale agreement. Hence, the suit is liable to be dismissed.
4. On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A1 and Ex.A2 were marked and PW.1 and PW.2 were examined. On the side of the Defendant, DW.1 was examined. Since the suit was dismissed, this Appeal Suit has been filed, by the Plaintiff.
5. This Court heard the submissions of the learned counsel on either side.
6. The learned counsel for the Appellant has submitted that no reply was sent to the legal notice Ex.A2, sent by the Plaintiff and that there is no document to prove the case of the Defendant and that the court below did not peruse the entire records and the evidence and that the court below came to the wrong conclusion and hence, the impugned judgement and decree of the court below is not sustainable.
7. The learned counsel for the Respondent would submit that the Defendant was not aware of the alleged sale agreement, Ex.A1 and that on perusal of the entire evidence, the court below came to the right conclusion and therefore, no interference by this Court is required and he would rely on the decision reported in 1993 (2) MLJ 560 [Viswanathan And Others Vs. R.Lakshmi Ammal (Deed) And Others].
8. This Court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.



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9.Ex.A1 is the sale agreement. Ex.A2 is the legal notice sent by the Plaintiff to the Defendant. Ex.A1 was signed by the erstwhile Managing Director of the Defendant Firm, Jothi Swaminathan and he died in 2008 and thereafter, his son Jothi Parthasarathy was the Managing Director and he was examined as DW.1.

10.After receipt of Ex.A2, the Defendant did not send any reply to Ex.A2 Notice. DW.1 did not even deny that the signature found in Ex.A1 is that of his father. The Defendant ought to have replied to Ex.A1 Notice. Without giving any reply to Ex.A1, mere statement of the Defendant that he was not aware of anything about the sale agreement Ex.A1 is not acceptable.

11.To prove his contention, the Plaintiff had examined himself as PW.1 and PW.2 and he had clearly stated in his evidence that on 09.10.2007, Ex.A1 was executed between the Plaintiff and the Defendant Firm, represented by its Managing Director, Jothi Swaminathan and an advance sale consideration of Rs.4,80,000/- was paid. PW.1 had also deposed that Jothi Swaminathan had executed Ex.A1 while he was working as the Managing Director in the Defendant Firm and received the advance sale consideration.

12.The Defendant has stated that he was not aware of anything about Ex.A1 and Ex.A2. Either he has to accept or deny it. Mere statement of the Defendant that he was not aware of anything about the execution of Ex.A1 is not acceptable. DW.1 has admitted that after the demise of his father, at present, he is the Managing Director of the Defendant Firm. PW.1 had proved Ex.A1 through his evidence and also the evidence of PW.2. The Defendant's contention is not proved by oral and documentary evidence. There was a delay in taking steps by the Plaintiff and hence, this Court is inclined to grant a decree for the advance amount only. Therefore, the Defendant is liable to pay the advance amount with interest. Accordingly, the Defendant is liable to pay a sum of Rs.4,80,000/- being the advance sale consideration, with interest at 6% p.a. from the date of the sale agreement, Ex.A1 till the date of realisation.

13.In fine, this First Appeal is disposed of with the above directions. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

Srcm



To

The XVIII Additional District
and Sessions Judge,
Chennai.

Copy To

The Section Officer
V.R.Section,
High Court, Madras.

+2ccs to Mr.Ashok Menon, Advocate Sr.No.12630

+1cc to Mr.V.K.Rajagopalan, Advocate Sr.No.12982

A.S.No.368 of 2014

CA(CO)
RVM(07/06/2022)